the vendor may retake the property or sue for the price. These remedies are generally held to be mutually exclusive, it being argued that as the consideration for the vendee's promise to pay is the passing of the property, seizure thereof causes failure of consideration barring any action by the vendor for installments past due. *Hewison* v. *Ricketts*, 63 L. J. Q. B. 711. *Cf. Crompton* v. *Beach*, 62 Conn. 25. But see 20 HARV. L. REV. 371; *ibid.* 655. Where, however, the contract constitutes a bailment for hire with an option to purchase, as in the principal case, it cannot be urged that termination of the bailment takes away the consideration; for the hirer has had the use of the property as agreed. Though contracts of conditional sale are often drawn in terms of a lease, an agreement which is really a contract of sale will be so construed, irrespective of what the parties may have called it. *Hine* v. *Roberts*, 48 Conn. 267; *Hervey* v. *R. I. Locomotive Works*, 93 U. S. 664. The test lies in the buyer's obligation. If he may avoid paying the amount of the purchase price by returning the chattel without liability for further rent, the contract is one of hire; for an agreement of sale and purchase necessitates two parties mutually bound, the one to pass and the other to take title. *Helby* v. *Matthews*, [1895] A. C. 471.

SALES — RIGHTS AND REMEDIES OF BUYERS — RIGHT OF INSPECTION BEFORE PAYMENT. — The plaintiff ordered from the defendant a quantity of groceries of a specified quality. He paid a part of the purchase price at the time of ordering and the balance was to be paid upon the arrival of the goods. The defendant shipped f. o. b. at the place of consignment on a bill of lading to the shipper's order. He notified the plaintiff that the goods were not of the required quality. The plaintiff refused to pay the draft sent with the bill of lading before inspecting the goods, and the defendant refused to allow inspection. The plaintiff brought an action to recover the part payment. *Held*, that the plaintiff may recover. *Plumb* v. *Bridge*, 113 N. Y. Supp. 92 (Sup. Ct., App. Div.).

The buyer under an executory contract of sale ordinarily has a right to inspect the goods before acceptance and payment of the purchase price. *Isherwood* v. *Whitmore*, 11 M. & W. 347. But the terms of the contract and the circumstances of the case may negative the right to inspection as a condition precedent to payment of the price. *Sawyer* v. *Dean*, 114 N. Y. 469. Thus, where payment is to be made against the bill of lading, the general rule is that payment must be made before the goods may be inspected. *Whitney* v. *McLean*, 4 N. Y. App. Div. 449. And the same is true in the case of a shipment C. O. D. *Wiltse* v. *Barnes*, 46 Ia. 210. See 18 HARV. L. REV. 386. But the decision in the principal case may be rested on another ground; for the admission by the defendant that the goods shipped were not of the required quality justified the plaintiff in refusing to accept them.

VENDOR AND PURCHASER — RIGHTS AND LIABILITIES — RIGHT OF VENDOR TO SUE FOR WASTE. — A contracted to sell land to B. Then B entered into a contract with C under which C cut timber on the land. Later B assigned to D. D paid A and brought suit against C in A's name. *Held*, that there can be no recovery. *McGregor* v. *Putney*, 71 Atl. 226 (N. H.).

A mortgagee may enjoin a mortgagor in possession from committing waste if the threatened acts would make the value of the property inadequate as a security. *William* v. *Chicago Exhibition Co.*, 188 Ill. 19. And the acts need not be such as would make the value of the land less than the mortgage debt, but only such as would make the security substantially less than the security contracted for. *King* v. *Smith*, 2 Hare 239; *Moriarty* v. *Ashworth*, 43 Minn. 1. The relation of vendor and vendee is recognized as analogous and the same rules are applied. *Van Wyck* v. *Alliger*, 6 Barb. (N. Y.) 507. In most jurisdictions a mortgagee cannot recover at law unless his security is rendered actually inadequate, while in others any lessening of value is enough. *Schalk* v. *Kingsley*, 42 N. J. L. 32; *Byrom* v. *Chapin*, 113 Mass. 308. Where the vendor brings his action at law there seems no reason why the analogy to the mortgage cases should not continue. But as the basis of relief in all cases is impairment of the value of the security, neither vendor nor mortgagee can